

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF

**UNIVERSITY OF ALABAMA AT BIRMINGHAM
BIRMINGHAM, JEFFERSON COUNTY, ALABAMA**

USEPA ID NUMBER ALD 063 690 705

Consent Order NO. 12-XX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") and the University of Alabama at Birmingham (hereinafter referred to as "UAB", "Operator", "facility", or "the owner"), pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act of 1978, (AHWMMA), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the ADEM Administrative Code, promulgated thereunder.

STIPULATIONS

1. The University of Alabama at Birmingham ("UAB", "Operator" or "Facility") is a teaching and research university, medical school and medical center. The site is located at 1530 3rd Avenue South Birmingham in Jefferson County. UAB is a Large Quantity Generator of hazardous waste with USEPA ID Number ALD 063 690 705.
2. The Alabama Department of Environmental Management is a duly constituted department of the state of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act, §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Hazardous Wastes Management and Minimization Act, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

DEPARTMENT'S CONTENTIONS

4. On December 5, 2011, the Department and the U.S. Environmental Protection Agency conducted a Compliance Evaluation Inspection at UAB to determine the facility's compliance with all applicable requirements of Division 14 of the ADEM Administrative Code. As a result of the inspection, a Notice of Violation was issued on January 31, 2012 citing the following violations:

A. ADEM Administrative Code r. 335-14-3-.03(5)(a)2. The Facility failed to label accumulation start dates on four containers of hazardous waste in the 90 day storage area.

B. ADEM Administrative Code r. 335-14-3-.03(5)(a)3. The Facility failed to label with the words "Hazardous Waste" the following containers located in the 90 day storage area: one 55-gallon drum of waste oil and lacquer paint hazardous waste located in the Paint Shop, and two 5-gallon buckets of spent solvent hazardous waste located in the Paint Shop's Paint Booth.

C. ADEM Administrative Code r. 335-14-3-.03(5)(a)3. The Facility failed to label with appropriate EPA hazardous waste code(s) multiple containers of hazardous waste located in the 90 day storage area and one container of hazardous waste located in the Paint Shop.

D. ADEM Administrative Code r. 335-14-3-.01(2). The Facility failed to perform an adequate waste determination on the contents of three bottles of unknown waste located in the yellow flammable storage cabinet in the 90 day storage area, one glass container of toluene and paraffin waste in the fume hood in the 90 day storage area, approximately thirteen containers of unknown waste located in Storage Room 121 of the Waste Holding Facility and on multiple broken lamps collected from wooden boxes used by the facility to collect and break lamps.

E. ADEM Administrative Code r. 335-14-11-.03(2)(b). The Facility has improperly treated universal waste lamps by breaking them in wooden boxes that do not meet the requirements for allowable treatment of universal waste lamps under 335-14-8-.01(1)(c)2(x).

F. ADEM Administrative Code r. 335-14-11-.03(5)(e). The Facility failed to label with the words "Universal Waste – Lamp(s)", "Waste Lamp(s)" or "Used Lamp(s)" thirty-four boxes and thirteen bundles of universal waste lamps located in the Paint Shop, and five cardboard containers, two bundles and seven individual universal waste lamps located in the Boshell Diabetics Building.

G. ADEM Administrative Code r. 335-14-11-.03(6)(c). The Facility failed to demonstrate accumulation time for: thirty-four boxes and thirteen bundles of universal waste lamps located in the Paint Shop; multiple containers of universal waste batteries located in the Paint Shop; two 55-gallon drums, four cardboard containers, two bundles of universal waste lamps and seven individual universal lamps located in the Boshell Diabetics Building; and one 55-gallon container of universal waste batteries located in the Boshell Diabetics Building.

H. ADEM Administrative Code r. 335-14-11-.03(4)(d)1. The Facility failed to properly contain thirty-four boxes and thirteen bundles of universal

waste lamps located in the Paint Shop, and eight containers, two bundles and seven individual lamps located in the Boshell Diabetics Building.

I. ADEM Administrative Code r. 335-14-11-.03(5)(a). The Facility failed to properly label multiple containers of universal waste batteries located in the Paint Shop, and one 55-gallon container of universal waste batteries located in the Boshell Diabetics Building.

J. ADEM Administrative Code r. 335-14-3-.03(5)(c)1(ii). The Facility failed to label the following containers with the words “Hazardous Waste” or other words identifying its contents: two 5-gallon satellite accumulation containers located in the Paint Shop paint booth; one 55-gallon satellite accumulation drum located in the Print Shop; one 55-gallon satellite accumulation drum located in the Art Building Darkroom; and one 55-gallon and one 5-gallon satellite accumulation container in the Art Building Print Making Lab.

K. ADEM Administrative Code r. 335-14-6-.09(4)(a). The Facility failed to properly close two 5-gallon satellite accumulation containers located in the Paint Shop and one 55-gallon satellite accumulation container located in the Print Shop.

L. ADEM Administrative Code r. 335-14-6-.02(7)(d)4. The Facility failed to provide documentation of hazardous waste training required by ADEM Administrative Code r. 335-14-6-.02(7)(a)1 for three employees whose duties have a direct effect on hazardous waste management and/or accumulation.

M. ADEM Administrative Code r. 335-14-6-.04(3)(d). The Facility failed to list the work addresses for all persons qualified to act as emergency coordinator in the facility’s contingency plan.

N. ADEM Administrative Code r. 335-14-6-.04(4)(b). The Facility failed to maintain documentation of submittal of the contingency plan to all local

law enforcement, fire departments, hospitals, ADEM Field Operations Division and local emergency response teams.

O. ADEM Administrative Code r. 335-14-6-.02(7)(d)3. The Facility failed to maintain a written description of the type and amount of training given to each person in a position related to hazardous waste management.

5. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violations, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violations upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation.

In arriving at the civil penalty assessed in this Order, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The violations involved the improper management of hazardous waste and universal waste.

B. THE STANDARD OF CARE: By committing these violations, UAB did not exhibit a standard of care sufficient to prevent the violations.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: UAB received minimal economic benefit from avoiding the cost associated with proper management of universal waste and hazardous waste.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: UAB immediately began addressing the violations and corrected many of them on the day they were discovered.

E. HISTORY OF PREVIOUS VIOLATIONS: The Operator does not have a significant history of non-compliance at this site.

F. THE ABILITY TO PAY: The Operator has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code §§ 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of **\$30,000.00** (see attachment) is appropriate and consistent with the historical penalty range imposed by the Department for similar violations.

6. The Department neither admits nor denies UAB's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

UAB'S CONTENTIONS

7. UAB consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein under the Alabama Hazardous Wastes Management and Minimization Act. UAB neither agrees nor disagrees with the allegations presented in this Consent Order, but, in an effort to cooperate with ADEM has consented to the terms of this Consent Order.

ORDER

Therefore, the Operator, along with the Department, desires to resolve and settle the violations cited above. The Department has carefully considered the facts available

to the Department and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Operator agree to enter into this Consent Order with the following terms and conditions:

A. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall label all hazardous waste with an accumulation start date as required by ADEM Admin. Code r. 335-14-3-.03(5)(a)3.

B. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall label all containers of hazardous waste with the words, "Hazardous Waste" as required by ADEM Admin. Code r. 335-14-3-.03(5)(a)3.

C. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall label all containers of hazardous waste with the appropriate EPA hazardous waste code(s) as required by ADEM Admin. Code r. 335-14-3-.03(5)(a)3.

D. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall perform a proper waste determination on all waste generated on-site as required by ADEM Admin. Code r. 335-14-3-.01(2).

E. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall not perform improper treatment of universal waste lamps, but shall comply with ADEM Admin. Code r. 335-14-11-.03(2)(b). Should UAB elect to treat universal waste lamps in the future, UAB will meet all requirements for allowable treatment of universal waste lamps as described in ADEM Admin. Code r. 335-14-8-.01(1)(c)2(x).

F. That, not later than thirty (30) days from the date of receipt of this Administrative Order, UAB shall provide the Department documentation that the structure of the building where fluorescent lamps were improperly treated by being broken in wooden boxes. (see paragraphs 4.E. and E. above) was not hazardous for

mercury and that workers in the building during and after the treatment were not exposed to hazardous levels of mercury.

G. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall properly label universal waste lamps with the words “Universal Waste – Lamp(s)”, “Waste Lamp(s)” or “Used Lamp(s)” as required by ADEM Admin. Code r. 335-14-11-.03(5)(e).

H. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall demonstrate the length of accumulation time for all universal waste as required by ADEM Admin. Code r. 335-14-11-.03(6)(c).

I. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall properly contain all universal waste lamps as required by ADEM Admin. Code r. 335-14-11-.03(4)(d)1.

J. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall properly label all universal waste batteries as required by ADEM Admin. Code r. 335-14-11-.03(5)(a).

K. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall label all satellite accumulation containers with the words “Hazardous Waste” or other words identifying its contents as required by ADEM Admin. Code r. 335-14-3-.03(5)(c)1(ii).

L. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall properly close all satellite accumulation containers as required by ADEM Admin. Code r. 335-14-6-.09(4)(a).

M. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall provide proof of hazardous waste training for all employees with job pertaining to hazardous waste as required by ADEM Admin. Code r. 335-14-6-.02(7)(a)1.

N. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall list the work addresses for all persons qualified to act as

emergency coordinator in the facility's contingency plan as required by ADEM Admin. Code r. 335-14-6-.04(3)(d).

O. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall maintain documentation on-site of submittal of the contingency plan to all local law enforcement, fire departments, hospitals, ADEM Field Operations Division and local emergency response teams as required by ADEM Admin. Code r. 335-14-6-.04(4)(b).

P. That, immediately upon receipt of this Order and continuing each and every day thereafter, UAB shall maintain a written description of the type and amount of training required for each job dealing with hazardous waste as required by ADEM Admin. Code r. 335-14-6-.02(7)(d)3.

Q. That, not later than forty-five (45) days from the date of receipt of this Administrative Order, UAB shall pay to the Department a civil penalty in the amount of **\$30,000.00** for the violations cited in this Order. All penalties due pursuant to this Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

**Office of General Counsel
Alabama Department of Environmental Management
Post Office Box 301463
Montgomery, AL 36130-1463**

All checks shall reference the UAB's name and address, and the ADEM Administrative Order number of this action.

R. UAB agrees, immediately upon receipt of this Order and continuing thereafter, the facility shall comply with all terms, conditions, and limitations of the Alabama Hazardous Wastes Management and Minimization Act of 1978, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

S. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or

for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

T. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order.

U. UAB agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

V. For purposes of this Consent Order only, UAB agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. UAB also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, it shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of UAB, including the UAB's contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of UAB) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because

of conditions beyond the control and without the fault of the Operator, the Department will extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but the Department is not obligated to do so.

W. The Department and UAB agree that the sole purpose of this Consent Order is to resolve and dispose of any and all violations stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facilities which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate. With regard to any such future order(s), litigation, or other enforcement action(s) which address a violation not raised in this Consent Order, UAB shall not be precluded from raising any defense it may have available except that UAB may not assert the issuance of this Consent Order as a defense to future order(s), litigation or other enforcement action(s) that address new matters not raised in this Consent Order.

X. The Department and UAB agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and UAB hereby waives any hearing on the terms and conditions of same.

Y. The Department and UAB agree that this Consent Order shall not affect the Operator's obligation to comply with any federal, State, or local laws or regulations.

Z. The parties agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

AA. The Department and UAB agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions herein shall remain in full force and effect.

BB. The Department and UAB agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

CC. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve UAB of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

The University of Alabama at Birmingham

Alabama Department of
Environmental Management

Max L. Richard
Max Richard
Assistant VP of Occupational Health and Safety

Lance R. LeFleur
Lance R. LeFleur
Director

Date Signed July 5, 2012

Date Signed _____

ATTACHMENT A

Penalty Calculation Worksheet

UNIVERSITY OF ALABAMA AT BIRMINGHAM
JEFFERSON COUNTY, AL
USEPA ID NUMBER ALD063690705

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failure by the generator to label multiple containers of hazardous waste with an accumulation start date.	4	\$400	\$400	\$00
Failure by the generator to label multiple containers of hazardous waste with the words "Hazardous Waste" and the appropriate EPA hazardous waste codes.	>25	\$2,500	\$2,500	\$00
Failure by the generator to perform a waste determination on 17 containers of hazardous waste and multiple broken universal waste lamps.	17	\$1,700	\$1,700	\$00
Improper treatment of universal waste lamps by the generator.	1	\$5,000	\$5,000	\$00
Failure by the generator to properly label multiple universal waste lamps.	>25	\$2,500	\$2,500	\$00
Failure by the generator to properly label multiple containers of universal waste batteries.	2	\$200	\$200	\$00
Failure by the generator to properly contain multiple universal waste lamps.	>25	\$2,500	\$2,500	\$00
Failure by the generator to demonstrate the accumulation time for multiple universal waste lamps and batteries.	>25	\$2,500	\$2,500	\$00
Failure by the generator to properly label six satellite accumulation containers.	6	\$600	\$600	\$00
Failure by the generator to properly close three satellite accumulation containers.	3	\$300	\$300	\$00
Failure by the generator to provide hazardous waste training for three employees.	3	\$1,500	\$1,500	\$00

Failure by the generator to list the work addresses for the emergency coordinator in the contingency plan.	1	\$100	\$100	\$00
Failure by the generator to maintain documentation of the submittal of the contingency plan to local law enforcement, fire departments, hospitals, etc.	1	\$100	\$100	\$00
Failure by the generator to maintain a written description of the type and amount of training required for each job dealing with hazardous waste.	1	\$100	\$100	\$00

Economic
Benefit*: \$00
Mitigating
Factors: \$00
Ability to
Pay*: \$00
Other
Factors: (-\$10,000.00)

Total Civil
Penalty: \$30,000.00